

(1997) 06 BOM CK 0004

In the Bombay High Court

Case No : Criminal Revision Application No. 226 of 1991

Balasaheb Annappa Waghmare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-06-1997

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2
Evidence Act, 1872 — Section 3, 45, 61
Penal Code, 1860 (IPC) — Section 304

Citation : (1998) BomCR(Cri) 170 : (1997) CriLJ 3476 : (1998) 1 DMC 249 :
(1997) 3 MhLj 397 : (1997) 4 RCR(Criminal) 525

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : A.P. Mundergji, for the Appellant; I.S. Thakur, Assistant Public
Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—By means of this revision the petitioner has impugned the judgment and order dated 23rd August, 1991, passed by the 3rd Additional Sessions Judge, Kolhapur, in Criminal Appeal No. 101 of 1989. Whereby the judgment and order dated 22-5-89 passed by the Assistant Sessions Judge, Kolhapur in Sessions Case No. 95 of 1988 convicting him for offences punishable under sections 304(B), 306 and 498-A I.P.C. and sentencing him to undergo R.I. for 7 years and to pay a fine of Rs. 2,000/- in default to suffer R.J. for 6 months, R.I. for 2 years and to pay a fine of Rs. 1,000/- in default to suffer R.I. for 4 months and R.I. for 1 year and to pay a fine of Rs. 500/- in default to suffer R.I. for 2 months respectively has been confirmed.

2. Briefly stated the prosecution case is that the deceased Sunita, daughter of P.W. 1 Laxman Awale was married to the petitioner on 11-5-1986. The evidence is that 8 to 10 months after the marriage, the ceremony in connection with pregnancy of 7 months was held in which the petitioner was only given clothes and not a golden ring which he wanted. Consequently he started harassing her. It is also alleged that on Padwa day in 1987 both the petitioner and Sunita came to

the house of P.W. 1 Laxman and the petitioner demanded Rs. 5,000/- for buying a motor cycle. P.W. 1 Laxman however, could manage only Rs. 1,000/-.

It is said that as P.W. 1 Laxman could not give the money Sunita started crying as she was apprehensive of more harassment. The evidence is that she was subjected to cruelty and harassment on account of this by the petitioner and his mother Kasabai Waghmare, who has been acquitted by the trial Court.

On 30-3-88 at about 8 p.m. she went to answer the call of nature and did not return back to the house. Consequently her parents were informed about this and they came to village Latwade where Sunita used to reside with the petitioner. On 31st March 1988 i.e. the next day Sunita's corpse was taken out from a well.

According to the prosecution on account of the harassment and cruelty meted out by the petitioner she committed suicide. The F.I.R. of the incident was lodged by Laxman P.W. 1 at Police Station Vadgaon and on its basis a case u/s 304-B I.P.C. etc. was registered against the petitioner and his mother Kasabai, After the usual investigation the petitioner and his mother were chargesheeted. The case came up for trial before the Assistant Sessions Judge, Kolhapur.

In the trial Court in all prosecution examined 17 witnesses. The trial Court found the petitioner guilty on the counts mentioned in para 1 and convicted and sentenced him in the manner stated in the said paragraph. It, however, acquitted co-accused Kasabai, because as observed in paragraph 13 of the judgment there was no evidence against her. The Appellate Court confirmed the conviction and sentence of the petitioner. Hence this revision.

3. I have heard Mr. A.P. Mundergji (or the petitioner and Mr. I.S. Thakur for the respondent. I have also perused the impugned judgment and record and proceedings. After reflecting over the matter I am of the judgment that this revision needs to be partly allowed, inasmuch as the petitioner deserves to be acquitted for the offence u/s 304 I.P.C. and his jail sentence for the offence u/s 306 I.P.C also deserves to be reduced.

4. Mr. Mundergji firstly urged that the evidence adduced by the prosecution did not inspire any confidence and on its basis the petitioner should not have been convicted on any of the three counts. However, when this submission of his did not make much impression he switched on to the wiser option of canvassing a legal submission and also urged that the sentence awarded to the petitioner is extremely excessive.

5. The legal submission canvassed by Mr. Mundergji is that no offence u/s 304-B I.P.C. is made out against the petitioner because the death of the deceased was not a dowry death as the demand made was not in connection with marriage which is an essential component of the offence u/s 304-B I.P.C. I find merit in the said contention of Mr. Mundergji. Section 304-B I.P.C. reads thus:

"304-B-Dowry death---(1) Where the death of a women is caused by any burns

or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

Explanation : For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

As is clear from the above, the explanation provides that "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.

Section 2 of the Dowry Prohibition Act, 1961, defines dowry thus :

"2. Definition of "dowry".---In this Act "dowry" means any property valuable security given or agreed to be given either directly or indirectly-

(a) by one party to marriage to the another party to the marriage; or

(b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

6. The Supreme Court in the decision reported in Smt Shanti and Another Vs. State of Haryana, , has held that section 304-B I.P.C. has four components :---

"(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

(2) Such death should have occurred within seven years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand for dowry.

The offence would fall within the ambit of this section if these four components exist conjunctively.

7. I have perused the evidence on record. I find that the same does not disclose any dowry demand as the term is defined in section 2 of the Dowry Prohibition Act, 1961, namely any property or valuable security being given or agreed to be given either directly or indirectly by the parents etc. at the time of marriage to the petitioner or his family members at any time before or after the marriage in connection with marriage.

8. The evidence on record shows that the petitioner started making the demands

at and after the function held to celebrate the 7th month pregnancy by Laxman P.W. 1, the father of Sunita.

9. The evidence of Laxman P.W. 1, his wife Vimla P.W. 12, his brother Dadu Avade P.W. 13, his brother Sadashiv P.W. 14 and his sister in law Shirmabai P.W. 15 is that at the said function the petitioner was not satisfied with the clothes which he was given and instead demanded a golden ring and when the same was not given he started ill-treating and harassing Sunita. I also find from the evidence of these witnesses that on the Padwa day 1987 the petitioner with Sunita came to Laxman's house and demanded Rs. 5,000/- for a motor cycle. Laxman could only manage Rs. 1,000/- and this also annoyed the petitioner who started ill-treating her with more vengeance.

10. In my view the demands made by the petitioner from the date of the function held to celebrate the 7th month pregnancy and onwards cannot be styled as a demand in connection with the marriage. In my view they were demands having no nexus with the marriage and were made after marriage. They started from the function held by Laxman to celebrate the 7th month pregnancy of Sunita. Hence the conviction of the petitioner for the offence u/s 304-B I.P.C. is unsustainable in law.

11. I, however find, that the conviction of the petitioner on the other two counts viz. 306 and 498-A I.P.C. has been correctly arrived at. The evidence of Laxman P.W. 1, his wife Vimla P.W. 12, his brother Dadu Avade P.W. 13, his brother Sadashiv P.W. 14 and his sister in law Shirmabai P.W. 15 shows that the deceased was harassed and ill-treated by the petitioner. From a perusal of the evidence of the said witnesses it appears that it was this cruelty and ill-treatment meted out by the petitioner to her which led her to commit suicide.

I find no infirmity in the impugned judgment in respect of the appreciation of evidence relating to the charges under sections 306 and 498-A I.P.C. against the petitioner.

12. This leaves me only with one question, viz. the quantum of sentence to be awarded to the petitioner.

Mr. Mundergi strenuously urged that considering the circumstances that the incident took place about 9 years ago and the petitioner has been in jail for about 3 1/2 months it is a fit case in which his sentence be reduced to the period already undergone by him. He urged that this is all the more necessary because the evidence discloses that the petitioner has a son aged about 10 years. He urged that he is required to be looked after by the petitioner.

13. Mr. Thakur, learned APP, strenuously opposed this submission of Mr. Mundergi. He urged that the offences committed by the petitioner were anti social and if a soft view is taken in respect of such offences it would provide an impetus to people to commit such offences.

14. I have reflected over the rival submissions of the learned Counsel for the

parties on the quantum of sentence. In my view the ends of justice would be amply satisfied if the sentence of the petitioner for the offence u/s 498-A I.P.C. is confirmed and that for the offence u/s 306 I.P.C. is reduced from 2 years to one years R.I., provided in lieu of the sentence reduced the petitioner pays a fine of Rs. 2,000/-; failing which he should undergo 6 months R.I.

15. In the result this revision petition is partly allowed and partly dismissed. I set aside the conviction and sentence of the petitioner for the offences punishable u/s 304-B I.P.C. and acquit him on the said count. In case he has paid the fine of Rs. 2,000/- on the said count it shall be refunded to him. I uphold the conviction and sentence of the petitioner for the offence u/s 498-A I.P.C. I also uphold the sentence of fine imposed on the petitioner for the offence u/s 306 I.P.C. but reduce his jail sentence on the said count from 2 years R.I. to one year R.I.; provided in lieu thereof he pays a fine of Rs. 2,000/ within 3 months from today in the trial Court. The petitioner is on bail. He shall be taken into custody forthwith to serve out his sentences.

Although the judgment of the trial Court shows that substantive sentences of the petitioner shall run concurrently, on the request of Mr. Mundergi I reiterate this in my judgment.

Rule is disposed off in the aforesaid manner.

16. Revision partly allowed.